

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41000
Docket No. MW-41151
11-3-NRAB-00003-090425**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to assign System Gang employees D. Robinson, K. McDaniel, R. Aguas and W. Grotte to assist division forces and perform various overtime duties needed for the slide at Frazier and Wicoppe on the Cascade Subdivision and instead offered and assigned said overtime to junior System Gang employees V. Mercado, A. Allen, N. Allen and W. Allen, Jr. beginning on February 12, 2008 through March 25, 2008 and continuing (Carrier's File 1501875).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Robinson, K. McDaniel, R. Aguas and W. Grotte shall now ‘. . . be paid all overtime hours worked between the days of February 12, 2008 and March 27, 2008 by V. G. Mercado, A. E. Allen, N. E. Allen, W. Allen Jr. Payment shall be in addition to any compensation they may have already received. This claim will be continuous.’”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The facts indicate that on January 19, 2008, a huge mud, rock and snow slide occurred on Coyote Mountain, taking with it thousands of trees and two sections of the Cascade Subdivision near Frazier, Oregon. The event, was dubbed the "Frazier Slide" which spanned approximately 40 acres, and in some places buried what had been ground level under 200 feet of debris. It wiped out sections of the mainline (3,000 feet of track) in three different areas. Approximately 200 employees and contractors worked around the clock to remove debris and unsuitable material from the sites. The track was out of service for 105 days during which time the slide caused the rerouting of 15 daily trains. The track was returned to service in early May 2008.

It is the position of the Organization that the Carrier improperly chose to utilize employees with less seniority than the Claimants to assist Division forces with flagging and to perform various duties needed at the aforementioned slide site during the period of February 12 through March 25, 2008. The Organization argued that the Carrier should not have assigned the listed employees to the emergency work because they were (1) assigned to gangs working farther away from the slide than the Claimants, (2) junior in seniority, and (3) less experienced. It concluded by requesting that the claim be sustained as presented.

It is the Carrier's position that the situation was a massive mudslide that was an extreme emergency and during such circumstances, it is afforded wide flexibility in filling assignments. It argued that the availability of work forces is not unilaterally based upon mere distance, but rather scheduling and flexibility. In other words, who is in the best position to respond to the situation, and to suggest that the Claimants were more available because they lived closer to the project area

is without Agreement support. It further argued that to infer that the Claimants should have been used for the work in question on the basis the Organization feels they were more experienced likewise has no Agreement support. It closed by asking that the claim remain denied.

There is no dispute that the Carrier was faced with an emergency situation, and during such circumstances, it is afforded greater flexibility in the filling of assignments. The facts indicate that the Carrier assigned junior employees on the "Frazier Slide" during an emergency situation. On the property, the Carrier argued that the Claimants were not assigned and working in the area of the mudslide and were instead assigned to various gangs that required them to protect those positions at the locations they were working. Additionally, it asserted they were not assigned to one of the gangs deployed to work in the mudslide area. The Organization rebutted that argument, in part, by stating that the junior employees were not assigned to any of the gangs deployed to the mudslide. However, it offered no evidence that the Claimants were not needed at their work locations and could have been released from their assignments. Despite the fact that the mudslide was a huge undertaking it stands un-refuted that a considerable amount of work still existed at other points on the railroad and employees were needed at those locations. There is no proof in the record that the Claimants could be released from their various work assignments and/or locations or that they could have been rescheduled to work at the mudslide. In Third Division Awards 10965 and 20527 it was determined that the Carrier has much broader latitude in its assignment of work during emergency conditions than under normal circumstances, and in this instance, there is no proof that the Carrier violated the Agreement. Therefore, the claim must be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 2011.